



DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2020-0015]

Pacific Ocean at Marine Corps Base, Camp Blaz, Mason Live-Fire Training Range Complex, on the North Coast of Guam; Danger Zone

AGENCY: U.S. Army Corps of Engineers, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Corps of Engineers (Corps) is amending its regulations to establish a danger zone in the Pacific Ocean adjacent to the Mason Live-Fire Training Range Complex at Marine Corps Base, Camp Blaz on the north coast of Guam. The danger zone is located entirely within the Pacific Ocean, comprising 3,660 acres and extending approximately 2.8 miles into the ocean from the high tide line.

Establishment of the danger zone will intermittently prohibit vessels from lingering in the danger zone when the range is in active use in order to ensure public safety.

DATES: *Effective date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO (David Olson), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Division, at David.B.Olson@usace.army.mil or 202-761-4922.

SUPPLEMENTARY INFORMATION: In response to a request by the United States Marine Corps, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 USC 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 USC 3), the Corps of Engineers (Corps) is amending its danger zone regulations to establish a permanent danger zone in the Pacific Ocean adjacent to the Mason Live-Fire Training Range Complex (LFTRC) on Guam. The danger zone regulation will be added at 33 CFR 334.1425. The danger zone is needed for the Department of Defense to meet its mission under 10 U.S.C. 5063, which is to maintain, train, and equip combat-ready military forces, deter aggression, and maintain freedom of the seas. Due to the strategic location of Guam and the Department of Defense's relocation of Marines from Okinawa to Guam, there will be an increased need for training and testing areas on Guam. The construction of the Mason LFTRC and its associated danger zone are designed to meet this increased need. The danger zone is necessary to protect the public from hazards associated with small arms training.

The proposed rule was published in the Federal Register on October 29, 2020 (85 FR 68507). The regulations.gov docket number is COE-2020-0015. Concurrently, a local public notice for the proposed danger zone was sent out from the Corps' Honolulu District. In response to the proposed rule, 89 comments were received. Two commenters were in support of establishing the danger zone. The remaining 87 comments are summarized below with the Corps' responses to those comments.

Four commenters requested either a public hearing with the Corps or public meetings with representatives of the Navy and/or the Corps. The commenters requested these meetings to better understand the impacts of the Mason LFTRC and the proposed danger zone, and to have an open dialogue and discussion. Some commenters requested additional time to comment on the public notice and said that

multiple comment periods should be conducted. One commenter stated that a mailing list should be set up for people who wish to be sent public notices directly for similar proposals.

The Corps determined that 30 days was sufficient to provide comments on the proposed danger zone regulation. The Corps reviewed all of the requests for a public hearing or public meetings as well as the comments received in response to the proposed rule. As stated in the Corps' regulations at 33 CFR 327.3(a), a public hearing is to be held "for the purpose of acquiring information or evidence" to be considered in the Corps' decision for a proposed action. The Corps determined that the record for this rulemaking action, including the public comments received in response to the proposed rule, contains adequate information regarding public concerns about the proposed danger zone and that a public hearing was not necessary. Public hearing denial letters were sent by the Honolulu District to each requestor on January 14, 2021.

Many commenters stated that no map was available and that they could not provide substantive comments without knowing the geographic limits of the proposed danger zone. A few commenters requested clarification on the times the range would be used or recommended that the rule specify the exact times the range would be in use and danger zone activated. One person said that the Corps had incorrectly calculated the amount of time the area of the danger zone would be closed to navigation.

The Corps provided a map with the district public notice, which was posted on the Corps' website, the Marine Corps Base Camp Blaz (MCBCB) website, and by multiple news outlets in print and on their respective websites. Additionally, the proposed rule that was published in the Federal Register and the district public notice both contained coordinates for the proposed danger zone, as well as a narrative

location description suitable to inform public comments. Upon review of the map provided with its public notice, the Corps discovered an error in mapping. The map showed the danger zone extending shoreward of the mean high water line. This is incorrect. As stated in the aforementioned narrative description, the danger zone would follow the mean high water line of the Pacific Ocean and would not extend shoreward of this line. A new map has been made which corrects this and shows that the danger zone extends seaward of the mean high water line.

The times proposed for the danger zone to be active were provided in the proposed rule. The exact days of the week during which live fire exercises would occur are at the discretion of the Marines in accordance with their training requirements. Those training requirements may change over time. The Marines will have a strategic communication plan (COMMSTRAT) for alerting the public to future range use. This plan includes posting the schedule on their website, having a public hotline for questions concerning range operations, and issuing Notices To Mariners (NTM). Concerning the comment about miscalculating the total amount of closure times, the Corps did not provide a total amount of training days the danger zone would be activated because training sessions are to be scheduled in the future. Also, the total number of training days is not relevant to this rulemaking action because the Marines establish the training schedules and those training schedules fall outside of the Corps' authority to issue regulations to establish danger zones.

Concerning the requests for extension of the comment period for the proposed rule, the Corps disagrees that additional time is necessary. The Corps provided sufficient time for interested parties to provide their comments on the proposed rule. For most proposed danger zone and restricted area regulations, the Corps provides a 30-day comment period. The Corps agrees that a mailing list should be available to

people who wish to be alerted of public notices. The Honolulu District mailing list can be found at <https://www.poh.usace.army.mil/Missions/Regulatory/Public-Notices/>.

Several commenters stated that the proposed danger zone should be evaluated through the preparation of an environmental impact statement (EIS). Some commenters stated that an EIS should be prepared because of the lack of economic analysis or because they believe that the danger zone would have a significant impact on the quality of the human environment. One commenter said that specific sections of the environmental assessment should be referenced and stated that the public notice was incomplete. Another commenter said that the Corps was placing the responsibility on the public to provide the analysis of impacts. Several commenters said that the establishment of the danger zone is a significant regulatory action. Some commenters requested consultation documents for Section 7 of the Endangered Species Act, the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act, Section 106 of the National Historic Preservation Act, and the Coastal Zone Management Act so that they could comment on the completeness of those consultations.

For the purposes of the National Environmental Policy Act (NEPA), the Federal action being undertaken by the Corps is the promulgation of the danger zone regulation under its authorities at 33 U.S.C. 1 and 3 and the procedures in 33 CFR part 334. The Corps is responsible for assessing the impacts of the proposed danger zone on the human environment, and for preparing appropriate NEPA documentation for its decision on whether to issue the final rule that would establish the danger zone. After evaluating the comments received in response to the proposed rule, to comply with NEPA requirements the Corps prepared an environmental assessment for this rulemaking action and concluded that the establishment of the danger zone would not have a significant impact on the quality of the human environment and

therefore does not require the preparation of an EIS. A copy of the environmental assessment is available from the Corps' Honolulu District office. The establishment of this danger zone will not result in work, structures, or any construction within the Pacific Ocean, or any modification to any vegetation, habitat, or structures in the Pacific Ocean, on the shore, or on the land. Therefore, the Corps Federal action, which is the establishment of this danger zone, will not have any impacts on natural resources or historical and cultural resources. With respect to impacts to people on Guam, the danger zone is intended to protect the public from hazards that may result from the use of the Mason LFTRC. The boundaries of the danger zone will be plotted by National Oceanic and Atmospheric Administration (NOAA) on its nautical charts, which will help alert users of those navigable waters to the presence of the danger zone, and to the text of the regulations governing that danger zone.

The establishment of a future Marine Corps base on Guam is a separate action that is outside of the Corps' rulemaking action for the establishment of this danger zone. Therefore, in its NEPA documentation for the rulemaking to establish the danger zone, the Corps is not required to address the potential future establishment of a Marine Corps base on Guam. Because the danger zone will be in effect only when the range is in use, the establishment of the danger zone will promote public safety, and impacts to the human environment caused by the establishment of the danger zone have been minimized. Vessel operators and fishers can use the navigable waters within the danger zone when the danger zone is not activated for live fire training exercises. The Corps has determined there is no need or requirement for mitigation beyond incorporating measures into the regulation governing the danger zone to minimize impacts to maritime traffic and fishing activities. The Corps determined that this rulemaking action is not a significant

regulatory action under Executive Order 12866 because it does not trigger any of the four significance thresholds identified in that Executive order.

At Marine Corps Base Camp Blaz, the Navy is the Federal agency responsible for compliance with applicable Federal laws, which may include Section 7 of the Endangered Species Act, the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act, Section 106 of the National Historic Preservation Act, and the Coastal Zone Management Act. The Navy's documents demonstrating compliance with these laws and concurrences from the agencies administering these laws can be obtained from the Navy's 2015 Final Supplemental Environmental Impact Statement (SEIS) for the Guam and Commonwealth of the Northern Mariana Islands Military Relocation.

A couple of commenters said that the Corps does not have the authority to establish the danger zone. One of these comments was specific to Chamoru lands and the other comment pertained to the area shoreward of waters of the United States. Some commenters stated that specifics on land restrictions should be made clear and studied for how these restrictions would affect cultural and historic sites. One commenter said that the restrictions were arbitrarily decided upon.

The Corps' authority for establishing danger zones is provided in Chapter 143, Subchapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3). The Corps agrees that it does not have the authority to establish danger zones in uplands landward of the mean high water line. The danger zone does not extend into areas landward of the mean high water line. Therefore, there will be no land restrictions caused by the establishment of this danger zone. With respect to the comment asserting that the restrictions were arbitrarily decided, the Corps disagrees that the decision was arbitrary. The Marines conducted extensive studies on the ballistics of weapons to be fired at the Mason LFTRC. The design of each range

further limited the space in navigable waters needed for the danger zone. The Marines requested that the danger zone be comprised of two areas to close off the smallest amount of area necessary for specific training sessions, to minimize impacts to the public's use of navigable waters.

A couple of commenters asked about the consequences of entering the danger zone and requested information regarding how the public could inform the Marines if someone violated the danger zone. These commenters said there is a need for public outreach and education on the use of the danger zone.

Concerning potential consequences for entering the danger zone while it is being used for small arms training, the most immediate consequence would be the potential for being struck by bullets, which on rare occasions may ricochet beyond the range's containment berms. This safety hazard is the reason for the establishment of this danger zone, which is to help provide for public safety when the range is in use. If a person, vessel, watercraft, etc. enter the danger zone without authorization, MCBCB Range Control will notify the U.S. Coast Guard for action. Concerning how the public can notify the Marines if someone appears to violate the danger zone regulation, notification of alleged violations of the danger zone regulation can be provided to the MCBCB Range Control, U.S. Coast Guard, or by calling 911. The Corps agrees that public outreach and education on the danger zone can help provide for the safety of the public. The Marines' COMMSTRAT will establish a method of public notification that will provide a snapshot of the range utilization calendar. Once the MCBCB Range Control Facility is established it will have a phone number for public inquiries. Additionally, the Marines will issue NTMs prior to active live fire training exercises and the danger zone will be depicted on applicable NOAA nautical charts.

Many commenters said that the establishment of the danger zone would have negative impacts on local fishers. One commenter asserted that the danger zone would deprive the people of Guam of their traditional fishing activities. One commenter stated that the danger zone would deny growth and development for the people of Guam. Other commenters noted that the impacted fishers would no longer be able to sell fish at local markets to support their families. A few commenters said that the federal government is taking too much of Guam's waters and submerged lands.

The establishment and use of the danger zone would restrict access to navigable waters within the danger zone only during small arms training exercises. Those navigable waters will be available for fishing when the Mason LFTRC is not being used for small arms training. The Marines have included a two-tiered approach to ensure that the least amount of area of navigable waters is restricted during live fire training, thus reducing the amount of closure time in the larger area. Practicing traditional, commercial, or recreational fishing in this area would continue to be allowed when the danger zone is not activated. Establishment of the danger zone would not prevent local fishers from being able to catch and sell fish at local markets. The danger zone is located over federally owned submerged lands and would not require the acquisition of any lands, submerged or otherwise. The Corps' regulations require that danger zones and restricted areas provide public access to the affected areas to the maximum extent practicable and not cause unreasonable interference with or restrict the food fishing industry (see 33 CFR 334.3(a) and (b), respectively). This final rule complies with that regulation.

One commenter said that 15 to 20 vessels run through these waters each day and that it is a popular area for many types of fish. Another commenter stated that the danger zone would result in the loss of some of the best waters for fishermen. Other commenters said that this danger zone is within prime trolling and bottom

fishing grounds used by many boaters and that any restriction would be unreasonable. Another commenter said that fishers would not be able to fish when particular fish are running or in migration with good sea conditions.

Offshore fishing areas located within the danger zone would not be allowed when the range is in use. Recreational boating and fishing would be permitted within the danger zone when live-fire training is not being conducted at the range. To provide for their safety, fishers and recreational boaters cannot enter the danger zone when live firing exercises are being conducted. All live fire training will cease if watercraft inadvertently enter the danger zone and training would resume once the vessel has cleared the danger zone. When live fire training is occurring, fishers and recreational boaters will need to navigate around the danger zone.

As stated in the Navy's 2015 SEIS, approximately 65% of fishing trips occur on the weekends and 35% of fishing trips occur on weekdays. Training at the Mason LFTRC will typically occur on weekdays when fewer vessels would potentially be transiting the danger zone. However, periodic weekend use of the Mason LFTRC could occur as needed. To provide awareness of times that the range is in use, the Marines will provide the proposed training schedule to the U.S. Coast Guard, who will issue and broadcast NTMs that would identify the danger zone as being in active use and direct vessel operators to navigate clear of the active danger zone. Additionally, boaters and fishers will be able to contact range control via radio or phone to get real time updates of active use of the Mason LFTRC, which will also minimize impacts on vessel operators. This communication will allow boaters to transit the danger zone during scheduled training days when the range is temporarily inactive. Range lookouts will scan the active area prior to and during live-fire training sessions to ensure that there are no vessels within or approaching the danger zone. If vessels

are at risk of entering the active area, use of the range would be suspended until the vessel leaves the danger zone.

A few commenters said that restrictions of the navigable waters for up to 75% of the year is too great for local fishers. A couple of commenters stated that if the danger zone is established it should be active fewer days out of the year to ensure that main fishing seasons are not impacted. One commenter asserted that due to the amount of time the Marines could restrict access to the danger zone, the entire fishing community would be at the mercy of the Marines' training schedule.

The proposed rule did not include estimates of the number of training days expected to occur during a typical year because the number of training days may vary from year-to-year. In response to these comments the Marines clarified, through Marine Corps Order 3550.10, that their standard for range availability is 242 days per calendar year, and that their annual goal is to utilize each range for at least 70 percent of the available days per year, or 169 days if the range is available the entire 242 days. Therefore, if the Mason LFTRC meets the goal of 169 days per year then the active areas of the danger zone would be restricted intermittently for 24 weeks. Additionally, for the larger of the two areas (Area 1), the danger zone would be activated only for training on larger caliber weapons, which would occur with less frequency. As stated above, fishing activities can occur in navigable waters within the danger zone when the danger zone is not in use for live firing exercises.

A few commenters said that the danger zone would result in fishing restrictions that affect the local economy. A few commenters stated that some fishers use these waters to sustain their families and that the activation of the danger zone would limit their ability to feed themselves. Another commenter asked whether the timing of range activities could adjusted to reduce impacts during fishing seasons. One commenter suggested that the Marines provide mitigation for impacts to fishing in the

form of placing new Fish Aggregating Devices (FADs), assisting the Guam government in maintaining existing FADs, and/or conducting harbor maintenance around the island.

The Corps acknowledges that the establishment and use of the danger zone will have some impacts on fishing activities but determined that these impacts would not unreasonably interfere with or restrict the food fishing industry. The establishment of the danger zone is necessary for public safety, including the safety of fishers that may fish in the waters within the danger zone. Fishers may utilize these waters for fishing activities when the danger zone is not activated for live firing training sessions. When the danger zone is activated, fishers may utilize navigable waters outside of the danger zone for fishing activities. As discussed in the Navy's 2015 SEIS, the Marines have committed to work with fishing community leaders and members to ensure the greatest practicable consideration is given to measures that would minimize or offset concerns about fishing impacts due to the regulations governing the danger zone. The Corps has determined that the establishment of the danger zone would not require any compensatory mitigation, such as the installation of new FADs or the maintenance of existing FADs.

The Corps' regulations also require the Corps to consult with the Regional Directors of the U.S. Fish and Wildlife Service and National Marine Fisheries Service regarding potential impacts to the food fishing industry. The Corps' Honolulu District sent each agency a letter dated January 18, 2021, requesting comments in relation to the food fishing industry. Neither agency responded to those letters.

Many commenters expressed opposition to the proposed danger zone because it would restrict recreational access to the waters and coastline. One commenter said that the beaches of Ritidian should be open to the public. A commenter stated that establishing the danger zone would result in beach closures

for nine consecutive months. One commenter said that they visit Ritidian every week and the danger zone would limit their access to the beach to only several days a year. A number of commenters indicated that the danger zone would restrict access to upland areas, including public and private lands.

The Corps acknowledges that the danger zone will restrict access to navigable waters within the danger zone while training activities are conducted. However, these restrictions will be intermittent and they are necessary for public safety. The establishment of the danger zone would not deny recreational access to waters and the coast. The danger zone would only restrict recreational access to certain navigable waters for the purposes of safety within the designated areas of the danger zone. Among the ranges within the Mason LFTRC, the Multi-Purpose Machine Gun Range has the largest danger zone (Area 1) and is the only one that would preclude access to a portion of the publicly accessible areas of the Ritidian Unit of the Guam National Wildlife Refuge. When other ranges in the Mason LFTRC are in use, the danger zone (Area 2) would not restrict access to the publicly accessible portion of the Ritidian Unit of the Guam National Wildlife Refuge. The Navy has an agreement with the Guam National Wildlife Refuge to establish new recreational areas to the west of the existing refuge and completely outside of the boundaries of the danger zone. When completed, this area will ensure public access year-round.

The establishment of the restricted area would not limit public access to the beaches to several days during the year. The danger zone would allow access several days of each week of the year. The danger zone would only limit access to waters that are seaward of the mean high water line. The establishment of the danger zone would not restrict access to any upland areas. Also, the Mason LFTRC's design was the only option that could be completed entirely on federal lands.

Therefore, there would be no restrictions to private property as a result of the establishment of the danger zone.

Many commenters expressed concerns about cultural and historic resources impacted by the construction of the firing range. Some commenters stated that the government was taking historic lands and destroying resources. Other commenters stated that the impacts to historic properties should not be allowed.

The Corps' authority is limited to issuing regulations for the establishment of the danger zone, which will not cause any physical alteration of the environment. The establishment of the danger zone will not result in effects to cultural and historic resources. Impacts to cultural and historic resources caused by the construction of the base are separate from the Corps' establishment of the danger zone through the rulemaking process. The establishment of the danger zone is an administrative process, and is an undertaking of a type that does not have the potential to cause effects on historic properties, cultural resources, or sacred cultural sites. The danger zone is located entirely in waters of the Pacific Ocean. The establishment of the danger zone involves no construction, structures, or in-water work. The Corps acknowledges that when the range is in use, there will be temporary impacts to access of traditional fishing grounds, and those impacts are discussed above.

A few commenters asked about the efficacy of red flags and lights for notification of an active firing range. One commenter said that it is not clear how the public would know which range area was active. Another commenter stated that protocols should be in place beyond issuing NTMs to inform boaters and the public about range activities. A few commenters asked how the danger zone would be enforced and if protocols would be in place to ensure boaters do not enter the danger zone during training sessions. A couple of commenters expressed concern about how the coastline would be managed to prevent swimmers, fishers, divers, and

others from accessing the danger zone during live fire exercises. Commenters also voiced concerns about how the public could notify the Marines if they observed a vessel or person in the danger zone during live firing exercises. Finally, some commenters stated concerns over smaller craft having to travel around the danger zone and having to enter more tumultuous waters to reach fishing areas.

Similar to navigation lights or aids on buoys and approach lighting for airfields, the red lights used for nighttime fire would be visible under all weather conditions that would be conducive to small boat and small arms range operations. The red flag (daytime fire) method of identifying an active danger zone is currently in use at the Finegayan Range, as well as the Naval Base Guam Known Distance and Multi-Purpose Ranges, and has proven to be an effective method of alerting the public of small arms range operation. The public would be informed as to which area is being used through NTMs, or by viewing the range schedule which will be posted on the MCBCB website. The public may also contact the hotline for range control to be set up by the Marines. The Marines' COMMSTRAT plan also includes future education and outreach to the public on the danger zone, and will include graphics and posters displayed at strategic locations across the island to better inform the public.

Prior to the activation of any range for live fire training, range inspectors will physically inspect the beach to ensure members of the public are not present near the danger zone. Military personnel will provide oversight and advise the public of danger zone restrictions. Road guards will have radio communications with MCBCB Range Control. The waters of the danger zone will be monitored by radar inside MCBCB Range Control. MCBCB Range Control will notify the U.S. Coast Guard of the presence of vessels in the danger zone so that the U.S. Coast Guard can take appropriate action. In addition, MCBCB Range Control would notify each range to cease fire until the U.S. Coast Guard removes the vessels or the vessels

expeditiously exit the danger zone. The public may notify MCBCB Range Control of vessels entering the danger zone via the hotline that will be established, by contacting MCBCB directly, or by dialing 911.

The Corps acknowledges that to avoid the active danger zones, vessels may have to travel into deeper waters that are further off the coastline. Prior to leaving, these boaters would be notified when the range will be active via NTMs and the other outreach tools discussed above. Those vessel operators can plan their trips to avoid active live fire exercises.

Many commenters stated concerns to land clearing, impacts to the local aquifer, adverse effect to plants and animals, and potential pollution from construction of the Mason LFTRC and its use. Other commenters expressed concern with how the range would affect threatened or endangered species. One commenter asked how the rounds fired would be collected and the area cleaned while other commenters were concerned with how the discharge of metals would affect the local water supply.

Establishing the danger zone is an administrative process that would have no direct or indirect adverse effects on the environment. Similarly, the establishment of the danger zone would have no effect on threatened and endangered species or designated critical habitat or result in the alteration of any natural resources. The impacts caused by the construction of the base, including the Mason LFTRC, and any other potential impacts shoreward of the mean high water line are beyond the purview of this rulemaking action.

Many commenters said that this danger zone should not be established at Ritidian because other existing ranges and their respective danger zones should be used instead. Other commenters suggested that there are other areas on the island

to build the ranges. A few commenters said that it is not possible to have the range and danger zone completely on land.

The Mason LFTRC was designed to meet the specific training needs of the Marines. Other ranges on the island were built for different purposes and needs and do not meet the needs of the Marines. In addition, in its 2015 SEIS, the Navy analyzed five different options including the use of other ranges. The construction of the Mason LFTRC was the only option of the five that could be accomplished solely on federally owned lands. This danger zone is the only option for the Mason LFTRC currently under construction and it must be over the water.

One commenter stated that an alternative would be to establish more stringent requirements for advanced notice to the public. This commenter suggested a minimum 72-hour notice that would allow locals to better plan their recreational or cultural activities in the Ritidian. Two commenters suggested limiting the days that small arms training is conducted. One commenter said that the danger zone should be reduced in size to provide more access to navigable waters.

The Corps acknowledges the benefits of increased communication and advance notice of range operations. The regulations do not specify the time limit for issuing an NTM, and the Corps does not have the authority to impose such a time limit. The Marines have agreed to issue NTMs no later than 24 hours in advance to allow for maximum flexibility for use of the firing range. Additionally, a range schedule will be posted on the MCBCB website. The Marines' COMMSTRAT will establish a method of public notification that will provide a snapshot of the range utilization calendar, and the Marines will establish a phone number for public inquiries. While limiting training sessions may result in the danger zone being activated less often, it is up to the Marines to determine their training requirements.

The Marines have limited the danger zone to the minimum size required to ensure public safety when the ranges are active. The Marines have requested two separate areas within the danger zone: Area 1, which is 3,660 acres in size, and Area 2, which is 1,425 acres in size. Area 2 is 40% the size of Area 1 and would be activated for smaller caliber weapons training on the more frequently used ranges. Area 1 would be activated fewer times than Area 2 because the larger caliber weapons would be trained on less frequently. The Corps has determined that the approach of designating two areas within the danger zone will be less restrictive to the public and will provide greater access to the public while ensuring public safety during live-fire training exercises.

Procedural Requirements

a. Regulatory Planning and Review. This final rule is not a “significant regulatory action” under Executive Order 12866 (58 FR 51735, October 4, 1993) and it was not submitted to the Office of Management and Budget for review.

b. Review Under the Regulatory Flexibility Act. This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The danger zone is necessary to protect public safety during use of the Mason LFTRC. To minimize impacts to maritime traffic, the Marines have designed a two-tiered approach for the danger zone to ensure that the least amount of area is restricted during training sessions. Fishers and other boaters can utilize navigable waters outside of the danger zone when the danger zone is activated for live firing exercises. When the range is not in use, the

danger zone will be open to normal maritime traffic and all activities, including fishing, anchoring, and loitering. After considering the economic impacts of this danger zone regulation on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act. An environmental assessment (EA) has been prepared for the establishment of this danger zone. The Corps has concluded that the establishment of the danger zone will not have a significant impact to the quality of the human environment and, therefore, preparation of an EIS is not required. The final EA and Finding of No Significant Impact may be reviewed at the District Office listed at the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act. This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. Under Section 203 of the Act, the Corps has also found that small governments will not be significantly and uniquely affected by this rulemaking.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.1425 to read as follows:

§ 334.1425 Pacific Ocean adjacent to the Mason Live-Fire Training Range Complex located at U.S. Marine Corps Base, Camp Blaz, on the northwestern coast of Guam; danger zone.

(a) The areas. The danger zone will consist of two areas: An outer area (Area 1) for larger caliber weapons and a smaller area (Area 2) for smaller caliber weapons that is set within Area 1. The datum for the coordinates in this section is NAD-83.

(1) Area 1. The waters bounded by the following seven points: Point A (13° 38' 59.443" N; 144° 51' 11.522" E) following the mean high water line to Point B (13° 38' 36.722" N; 144° 52' 50.256" E), following the mean high water line to Point C (13° 38' 33.936" N; 144° 52' 53.031" E), Point D (13° 40' 8.336" N; 144° 53' 44.876" E), Point E (13° 40' 56.842" N; 144° 53' 42.808" E), Point F (13° 41' 28.434" N; 144° 52' 37.582" E), and Point G (13° 41' 3.344" N; 144° 51' 53.652" E).

(2) Area 2. A subset of waters within Area 1 bounded by the following six points: Point A (13° 39' 7.432" N; 144° 52' 8.210" E) following the mean high water line to Point B (13° 38' 36.722" N; 144° 52' 50.256" E), following the mean high water line to Point C (13° 38' 33.936" N; 144° 52' 53.031" E), Point D (13° 39' 54.724" N;

144° 53' 37.400" E), Point E (13° 40' 25.737" N; 144° 52' 43.157" E), and Point F (13° 40' 6.494" N; 144° 52' 7.349" E).

(b) The regulation. (1) The enforcing agency will designate which area will be closed for use on dates designated for live fire. No persons, watercraft, or vessels shall enter or remain in the area during the times designated for live fire except those authorized by the enforcing agency. All live-fire training will cease if a person, watercraft, or vessel inadvertently enters the designated area and may resume once they have cleared the danger zone. The Installation Range Control Officer will be responsible for submitting all local Notices to Mariners for specific dates of firing, which will be disseminated through the U.S. Coast Guard and on the Marine Corps Base Camp Blaz website. The area will be open to normal maritime traffic when the range is not in use.

(2) When the range is in use red flags will be displayed from conspicuous and easily seen locations on the east and west boundaries of the danger zone to signify that the range is in use. These flags will be removed when firing ceases for the day.

(3) During the night firing, red lights will be displayed on the east and west sides of the danger zone to enable safety observers to detect vessels that may attempt to enter the danger zone. All range flags and red lights will be visible from 360 degrees. Due to the depth of the ocean the danger zone will not be marked with buoys.

(c) Enforcement. The restrictions on public access through the danger zone shall be enforced by the Commander, Marine Corps Base, Camp Blaz, and such agencies as the Commander may designate in writing.

Alvin B. Lee,
Director of Civil Works.

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